SUPREME COURT OF THE UNITED STATES.

No. 332.

WILLIAMSON WRIGHT, PLAINTIFF IN ERROR,

vs.

JOHN MOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Summons	1	1
Declaration	2	1
Agreement of counsel	15	7
Finding	16	8
Bond	18	8
Exceptions	19	9
Final judgment	41	19
Writ of error	43	20
Citation	45	20
Assignment of error	48	21

1 Pleas of the circuit court of the United States for the 8th judicial circuit and district of Indiana, begun, holden, and continued at the United States court-house in the city of Indianapolis, in said district, on the 1st Tuesday in May, A. D. 1866, before the honorable David Davis, one of the associate justices of the Supreme Court of the United States.

JOHN MOTT
vs.
WILLIAMSON WRIGHT. } 559.—Assumpsit.

Be it remembered, that on the 19th day of August, 1864, the plaintiff filed in the clerk's office of this court his præcipe in this action as follows, to wit: The clerk of the United States circuit court will please issue process in an action of assumpsit, wherein John Mott, a citizen of the State of New York, is plaintiff, and Williamson Wright, a citizen of the State of Indiana, is defendant, putting the damages at $10,000 00.

BARBOUR & HOWLAND,
For the Plaintiff.

And thereupon a summons was issued, as follows, to wit:

The President of the United States of America to the marshal of the district of Indiana, greeting:

2 You are hereby to summon Williamson Wright, if he may be found in your district, to be and appear before circuit court of the United States for the district of Indiana, to be holden before the judges thereof, at Indianapolis, in said district, on the 1st Tuesday in November next, to answer unto John Mott, a citizen of the State of New York, in a plea of assumpsit—debt, damages $10,000 00, and have you then and there this writ.

Witness the honorable B. Taney, Chief Justice of the Supreme Court of United States, and the seal of the circuit court of the United States for the district of Indiana hereunto affixed, at Indianapolis, this 19th day of August, in the year of our Lord one thousand eight hundred and sixty-four.

JOHN H. REA, *Clerk.*

And afterwards, to wit, on the 21st day of October, 1864, the plaintiff filed in the office of this court this declaration in this cause, as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

In the United States circuit court, Nov. term, 1864, for the 8th judicial circuit and district of Indiana.

John Mott, a citizen of the State of New York, the plaintiff in this suit, complains of Williamson Wright, a citizen of the State of Indiana, defendant, of a plea of trespass on the case upon promises:

1st For that whereas, on the 2d day of May, 1861, at the

3 city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his promissory note in writing bearing date the day and year aforesaid, and thereby then and there, seven months after date, promised to pay to the defendant's order five hundred and ten dollars and thirty-three cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who then and there, by the description of Wm'son Wright, indorsed said note in writing and delivered it to the plaintiff. and did then and there thereby order the said sum of $510 33 to be paid to said plaintiff. And the said plaintiff, when said note became due, to wit, on the 5th day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon the payment of said note was then and there refused, and the plaintiff did then and there cause said note to be duly protested for non-payment. Of all of which said defendant had then and there due notice, and said plaintiff then and there paid as charges for such protest and notice the sum of seventy-eight cents.

4 2d. And for that whereas, on the 7th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, seven months after date, promised to pay to the defendant's order five hundred and ten dollars and thirty-three cents, without any relief whatever from valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who then and there, by the description of Wm'son Wright, indorsed said note in writing and delivered it to the said plaintiff, and did then and there thereby order the said sum of $510 33 to be paid to said plaintiff. And said plaintiff, when said note became due, to wit, on the 10th day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly preserved for payment and payment demanded, whereupon the payment thereof was refused, and the plaintiff did then and there cause said note to be duly protested for non-payment. Of all of which said defendant had then and there due notice, and said plaintiff then and there paid as charges for such protest

5 and notice the sum of 78 cents.

3d. And for that whereas, on the 13th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, seven months after date, promised to pay to the defendant's order five hundred and ten dollars and thirty-three cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who

then and there, by the description of Wm'son Wright, indorsed said note in writing, and delivered it to the plaintiff, and did then and there order the said sum of $510 32, to be paid to said plaintiff, and the said plaintiff, when said note became due, to wit, on the 16th day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon the payment of said note was then and there refused, and the plaintiff did then and there cause the said note to be duly protested for non-payment. Of all of which the said defendant had then and there due notice, and said plaintiff then and there paid as charges for
6 such protest and notice the sum of 78 cents.

4th. For that whereas, on the 13th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year aforesaid, and thereby then and there, six months after date, promised to pay to the order of said defendant five hundred and thirty-nine dollars and forty-two cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who then and there, by the description of "Wm'son Wright," indorsed said note in writing, and delivered it to the plaintiff, and did then and there order the said sum of $539 42 to be paid to said plaintiff; and the said plaintiff, when the said note became due, to wit, on the 16th day of November, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon the payment of said note was refused, and the said plaintiff did then and there cause said note to be duly protested for non payment. Of all of which defendant had then and there due notice, and said plaintiff then and there paid as charges for such protest and notice the
7 sum of 78 cents.

5th. And for that whereas, on the 18th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his other promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, seven months after date, promised to pay to the order of said defendant the sum of five hundred and ten dollars and thirty-two cents, without any relief whatever from any valuation or appraisement laws at the Bank of North America, in the city of New York, and then and there delivered the same to said defendant, who then and there, by the description of "Wm'son Wright," indorsed said note in writing, and delivered it to the plaintiff, and did then and there thereby order the said sum of $510 32 to be paid to said plaintiff, and said plaintiff, when said note became due, to wit, on the 21st day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded whereupon the payment of said note was then and there refused,

and the plaintiff did then and there cause said note to be duly protested for non-payment. Of all of which said defendant had then and there due notice, and the plaintiff then and there paid as
8 charges for such protest and notice the sum of 78 cents.

6th. And for that whereas, on the 18th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year last mentioned, and thereby then and there, six months after date, promised to pay to the said defendant's order the sum of five hundred and thirty-nine dollars and 42 cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who then and there, by the description of Wm'son Wright, indorsed said note in writing, and delivered it to the plaintiff, and did then and there order the said sum of $539 42 to be paid to said plaintiff; and the said plaintiff, when said note became due, to wit, on the 22d day of November, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused said note to be duly presented and payment demanded, whereupon payment thereof was then and there refused, and said plaintiff did then and there cause said note to be duly protested for non-payment. Of all which said defendant had then and there due notice; and said plaintiff then and there paid as charges for such pro-
9 test and notice the sum of seventy-eight cents.

7th. And for that whereas, on the 23d day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there, seven months after date, promised to pay to the defendant's order five hundred and ten dollars and thirty-two cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the defendant, who then and there, by the description of "Wm'son. Wright," indorsed said note in writing, and delivered it to the plaintiff, and did then and there thereby order the said sum of $510 32 to be paid to the said plaintiff. And the said plaintiff, when said note became due, to wit, on the 26th day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon the payment thereof was then and there refused, and the plaintiff did then and there cause said note to be duly protested for non-payment. Of all of which said defendant had then and there
10 due notice. And said plaintiff then and there paid as charges for such protest and notice the sum of 78 cents.

8th. And for that whereas, on the 23d day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his other certain promissory note in writing, bearing date the day and year last aforesaid,

and thereby then and there, six months after date, promised to pay to the order of the said defendant the sum of five hundred and thirty-nine dollars and 42 cents, without any relief whatever from valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to the said defendant, who then and there, by the description of "Wm'son Wright," indorsed said note in writing, and delivered it to the plaintiff, and did then and there thereby order the said sum of $539 42 to be paid to said plaintiff. And the said plaintiff, when the said note became due, to wit, on the 26th day of November, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon payment was then and there refused, and the plaintiff then and there caused said note to be duly protested for non-payment. Of all of which said defendant then and there
11 had due notice. And the plaintiff then and there paid as charges for such protest and notice the sum of 78 cents.

9th. For that whereas, on the 27th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," bearing date the day and year last aforesaid, and thereby then and there, seven months after date, promised to pay to the defendant's order five hundred and ten dollars and thirty-two cents, without any relief from valuation or appraisement laws, at the Bank of North America, in the city of New York; and then and there delivered the same to the said defendant, who then and there, by the description of "Wm'son Wright," indorsed said note in writing, and delivered it to the plaintiff, and did then and there thereby order the said sum of $510 32 to be paid to said plaintiff. And said plaintiff, when said note became due, to wit, on the 30th day of December, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the said note to be duly presented and payment demanded, whereupon the payment was then and there refused. Thereupon said plaintiff did then and there cause said note to be duly protested for non-payment. Of all of which said defendant had then and there due notice, and the said plaintiff then and there paid as
12 charges for such protest and notice the sum of 78 cents.

10th. And for that whereas, on the 27th day of May, 1861, at the city of New York, to wit, at the district aforesaid, John W. Wright, by the description of "J. W. Wright," made his certain other promissory note in writing, bearing date the day and year aforesaid, and thereby then and there, six months after date, promised to pay to the defendant's order five hundred and thirty-nine dollars and forty-two cents, without any relief whatever from any valuation or appraisement laws, at the Bank of North America, in the city of New York, and then and there delivered the same to said defendant, who then and there, by the description of "Wm'son Wright," indorsed said note in writing, and delivered it to the plaintiff, and then and there thereby ordered and appointed the said sum of $539 42 to be paid to said plaintiff. And the said plaintiff, when the said note became due,

to wit, on the 30th day of November, 1861, at the Bank of North America, in the city of New York, to wit, at the district aforesaid, caused the same to be duly presented and payment thereof demanded, whereupon payment thereof was then and there refused. And the plaintiff did then and there cause the said note to be duly pro-
13 tested for non-payment. Of all of which the said defendant then and there had notice, and said plaintiff then and there paid as charges for such protest and notice the sum of seventy-eight cents.

And the said defendant then and there became liable, &c., and being so liable on the day of , 1861, in consideration thereof, at the district aforesaid, undertook, and then and there faithfully promised said plaintiff to pay him the said several sums of money, in the said several promissory notes specified, with the interest accruing thereon and costs of said several protests and notices, whenever he, the said defendant, should be afterwards thereunto questioned. And the plaintiff, in fact, says that all the said several sums of money have each and all them been long since due and payable according to the tenor and effects of said promissory notes. The said defendant has not, nor has the said John W. Wright, nor has any other person, paid said sums or any part thereof to said plaintiff or any other person for his use, but to pay the same or any part thereof have hitherto wholly neglected and refused, to the damage of said plaintiff of $10,000.

And hence he brings his suit.

BARBOUR & HOWLAND.
Attorneys for Pl'ff.

14 And afterwards, to wit, on the 25th day of August, 1864, the marshal returned in the clerk's office aforesaid said summons, indorsed as follows, to wit:

August 25th, 1864, I served the within summons as commanded by reading to, and copy left with, Williamson Wright.

D. G. ROSE, *U. S. Marshal.*
By J. S. BIGELOW, *Deputy.*

And afterwards, to wit, at the May term for the year 1865, the court aforesaid, on the 5th day of May, the following order was made:

Come now the parties, by their respective attorneys, and by agreement this cause is continued.

And afterwards, to wit, at the November term, 1865, the court aforesaid, on the 8th day of November, the following proceedings were had:

Comes the plaintiff, by his attorneys, and on their motion the defendant is ruled to plead on to-morrow.

And afterwards, to wit, at the term aforesaid, on the 9th day of November, 1865, the following further proceedings were had in said cause:

Now comes the defendant, by his attorney, and files the plea of the general issue, together with an agreement.

Here follows said plea:

15 And the said defendant, by McDonald, Roach & Sheeks, his attorneys, comes and defends the wrongs and injury when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country.

McDONALD, ROACH & SHEEKS,
Attorneys for Def't.

Here follows the agreement:

It is hereby agreed that all matters of answer, counted claim, set off, and reply which might have been pleaded herein may, on the trial of the above-entitled cause, be given in evidence and judgment rendered thereon under the declaration and general issue pleaded herein the same as if said matters of defence and reply had been specially pleaded.

BARBOUR & JACKSON,
PORTER, HARRISON & FISHBACK,
For Plaintiff.
McDONALD, ROACH & SHEEKS,
For Def't.

And by agreement of parties leave is granted to the plaintiff to take his own deposition and those of one Orelock, during the present term of this court, due notice being given to the defendant. And upon further motion leave is granted to the parties to take depositions at any time during the present term of this court.

16 And afterwards, to wit, at the court aforesaid, at the time aforesaid, on the 6th day of December, 1865, the following further proceedings were had:

Now come the parties, by their attorneys aforesaid, and by their within agreement filed herein, the trial of the issue in this cause, and the assessment of the damages, are submitted to the court without the intervention of a jury.

Here follows said agreement:

It is agreed that the above-entitled case be submitted for trial, finding, and judgment, to the court, honorable David McDonald presiding, without the intervention of a jury.

JOHN MOTT,
By PORTER, HARRISON & FISHBACK,
His Attorneys.
WILLIAMSON WRIGHT,
By McDONALD, ROACH & SHEEKS,
His Attorneys.

And the court, upon hearing the evidence, finds the said issue for the plaintiff and assesses his damages at the sum of six thousand six hundred and eighty-nine dollars and five cents, ($6,689 05,) and hereupon, by leave of the court and the consent of parties, the defendant moves that the said finding of the court be set aside for the want of sufficient evidence to sustain it, and a new suit of said
17 plaintiff entered; and the court upon hearing the argument of counsel on said motion, not being sufficiently advised of the premises, takes the same under advisement until the next term of this court, until which time this cause is continued.

And afterwards, to wit, at the May term for the year 1866 of the court aforesaid, on the 10th day of May, the following further proceedings were had:

Comes now the plaintiff, by Messrs. Porter, Harrison & Fishback, his attorneys, and said defendant comes also by Messrs. McDonald, Roach & Sheeks, his attorneys, and thereupon, on motion of the plaintiff's counsel, the rule taken against him at the last term of the court is discharged. It is therefore considered by the court that said plaintiff do recover of the defendant the sum of six thousand six hundred and eighty-nine dollars and five cents, being the amount found to be due upon the 6th day of December, 1865, with the further sum of one hundred and seventy-one dollars and sixty-five cents for interest accrued since that date, making in all the sum of six thousand eight hundred and sixty dollars and seventy cents, ($6,860,70,) together with his costs and charges in this behalf expended.

And afterwards, to wit, at the court aforesaid, at the time
18 aforesaid, on the 14th day of May, 1865, the following further proceedings were had, to wit:

Comes now the defendant, by Messrs. McDonald, Roach and Sheeks, his attorneys, and upon motion a writ of error is allowed in this case upon the plaintiff in error filing bond in the sum of thirteen thousand dollars, with sureties to be approved by the court, and the plaintiff in error now files a bond in that sum, executed by himself and William Wilson, who are approved as sureties by the court. Here follows said bond:

Know all men by these presents, that we, Williamson Wright and William Wilson, are held and firmly bound unto John Mott in the penal sum of thirteen thousand dollars, to the payment of which, well and truly to be made and done, we bind ourselves, our heirs and executors and administrators, jointly and severally, by these presents. Sealed with our seals, this 20th day of May, A. D. 1866.

The conditions of the above obligation are such that whereas the above bound Williamson Wright is about to sue out a writ of error from the Supreme Court of the United States to the circuit court of the United States for the district of Indiana, in a cause in said circuit court, wherein the said John Mott is plaintiff and the said Williamson Wright is defendant. Now therefore if the said Wil-

19 liamson Wright shall prosecute his said writ to effect, and shall assume all damages and costs if he fails to make his plea given, then this bond shall be void, otherwise to be and remain in full force and virtue in law.

Witness our hands and seals this day and year aforesaid.

[SEAL.] WILLIAMSON WRIGHT,
[SEAL.] WILLIAM WILSON,

Attest: D. D. PRATT.

I accept and approve the foregoing bond and surety, May 14th, 1866.

DAVID McDONALD,
Judge of the District Court of the U. S.
for the District of Indiana.

And afterwards, to wit, at the court aforesaid at the term aforesaid, on the 18th day of May, 1866, the following further proceedings were had:

Comes now the defendant by his attorneys and files a bill of exemptions in this case as follows, to wit:

In the circuit of the United States, district of Indiana.

Be it remembered that, on the trial of this cause, the evidence was as follows:

First. The plaintiff read in evidence the 10 notes described in the declaration, with the indorsements thereon, as therein stated and duly proved by notarial protests and certificates, the demands and failure to pay, and the protests and notices, as alleged in the declaration.

He also read in evidence the deposition of L. Pitkins, the no-
20 tary public, on the point of demand, protest, and notice, to wit:

Lucius Pitkins, of lawful age, being duly sworn, deposeth as follows:

1st question by plaintiff's attorney. Where do you reside and what was your business in 1861 and since?

I reside at No. 135 west 38th street, in the city of New York. In 1861 and since I was and have been a notary public in the city of New York.

2d question by the plaintiff's attorney. Look at the paper now produced marked plaintiff's Exhibit IV, of which the following is a copy:

$510 33. NEW YORK, *May 2d*, 1861.

Seven months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of William Wright five hundred and ten dollars and thirty-three cents, without any relief whatever from any valuation, appraisement, or stay laws

now in force or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due Dec. 5, 1861. J. W. WRIGHT.

Indorsed: WM'SON WRIGHT,
EDWARD ALEXANDER.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Ans. I have seen this note before. On the 5th day of December, 1861, it was placed in my hands as notary public for presen-
21 tation by Edward Alexander. I presented it, and demanded payment of the cashier of the Bank of North America in the city of New York, during business hours of the same day, who refused to pay the same. I was answered in substance by him that said note would not be paid, the exact language I cannot recollect; but payment was positively refused. I thereupon, on the same day, protested this note for non-payment; and on the same day I served a notice of protest thereof upon Williamson Wright by depositing a notice of protest of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment as above stated, and that the holder would look to the said Wright for payment thereof, which notice I deposited in the general post office of the city of New York, enclosed in an envelope addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon on the same day.

3d question by plaintiff's attorney. Look at the paper produced marked plaintiff's Exhibit No. V, of which the following is a copy:

$510 33. NEW YORK, *May 7th*, 1861.

Seven months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of William Wright five hundred and ten and 33-100 dollars without any
22 relief whatever from any valuation, appraisement, or stay laws in force or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due Dec. 10th, 1861.

J. W. WRIGHT.

WILLIAMSON WRIGHT,
EDWARD ALEXANDER.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 10th day of December, 1861, it was placed in my hands, as notary public, for presentation, by Edward Alexander. I presented it and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered in substance by him, that said note would not be paid; the exact language I cannot recollect, but payment was posi-

tively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Williamson Wright by depositing a notice of protest of said note, stating that said note had on that day been protested, payment demanded and refused, and thereupon protested for non-payment, as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office of the city of New
23 York, enclosed in an envelope addressed to Williamson Wright, at his place of residence, at Logansport, Indiana, and prepaid the postage thereon.

4th question by plaintiff's attorney. Look at the paper now produced, marked plaintiff's Exhibit No. I, of which the following is a copy:

$510 32. NEW YORK, *May* 13*th*, 1861.

Seven months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred and ten and 32-100 dollars, without any relief whatever from any valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due Dec. 16, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 16th day of December, 1861, it was placed in my hands, as notary public, for presentation, by John Mott. I presented it and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same.
I was answered in substance by him that said note would not
24 be paid; the exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Williamson Wright, by depositing a notice of protest of said note, stating that said note had, on that day, been protested, payment demanded and refused, and therefore protested for non-payment, as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office in the city of New York, enclosed in an envelope addressed to Williamson Wright, at his place of residence, at Logansport, Indiana, and prepaid the postage thereon.

5th question by plaintiff's attorney. Look at the paper now produced marked plaintiff's Exhibit No. VI, of which the following is a copy:

$539 42. NEW YORK *May 13th*, 1861.

Six months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred thirty-nine and 42-100 dollars without any relief whatever from any valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due November 16, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT,
EDWARD ALEXANDER.

25 And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 16th day of November, 1861, it was placed in my hands, as notary public, for presentation by Edward Alexander. I presented it and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered in substance by him that said note would not be paid; the exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Williamson Wright, by depositing a notice of protest of said note, stating that said note had, on that day been presented, payment demanded and refused, thereupon protested for non-payment, as above stated, and that the holder would look to said Wright for payment thereof, in the general post office of the city of New York, enclosed in an envelope addressed to Williamson Wright, at his place of residence, at Logansport, Indiana, and prepaid the postage thereon.

6th question by plaintiff's attorney. Look at the paper now
26 produced, marked plaintiff's Exhibit No. II, of which the following is a copy:

$510 32. NEW YORK, *May 18th*, 1861.

Seven months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred ten and 32-100 dollars, without any relief whatever from any valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

J. W. WRIGHT.

Due Dec. 21st, 1861.

Indorsed: WM'SON WRIGHT.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 21st day of December, 1861, it was placed in my hands, as notary public, for presentation by John Mott. I presented it, and demanded payment of the cashier

of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid. The exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment,
and on the same day I served a notice of protest thereof upon
27 Williamson Wright, by depositing a notice of protest of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment, as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office of the city of New York, enclosed in an envelope, addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

7th question by plaintiff's attorney. Look at the paper now produced, marked plaintiff's Exhibit No. VII, of which the following is a copy:

$539 42. NEW YORK, *May* 18*th*, 1861.

Six months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred and thirty-nine dollars and forty-two cents, without any relief whatever from any valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due November 21st, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT.
EDWARD ALEXANDER.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

28 Answer. I have seen this note before. On the 21st of November, 1861, it was placed in my hands, as notary public, for presentation by Edward Alexander. I presented it, and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid. The exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereupon Williamson Wright, by depositing a notice of protest of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment, as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office of the city of New York, enclosed in an envelope, addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

8th question by plaintiff's attorney. Look at the paper now produced, marked plaintiff's Exhibit III, of which the following is a copy:

29 $510 32. NEW YORK, *May* 23*d*, 1861.

Seven months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred and ten and 32-100 dollars, without any relief whatever from any valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due December 26, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 26th day of December, 1861, it was placed in my hands, as notary public, for presentation by John Mott. I presented it, and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid. The exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Williamson Wright, by depositing a notice of pro-
30 test of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment, as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office in the city of New York, enclosed in an envelope, addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

9th question by plaintiff's attorney. Look at the paper now produced, marked plaintiff's Exhibit No. VIII, of which the following is a copy:

$539 42. NEW YORK, *May* 23*d*, 1861.

Six months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana promise to pay to the order of Williamson Wright five hundred and thirty-nine and 42-100 dollars, without any relief whatever from valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due November 26th, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT.
EDWARD ALEXANDER.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 26th day of
31 November, 1861, it was placed in my hands, as notary public, for presentation by William Alexander. I presented it, and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid; the exact language I cannot recollect; but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Wm'son Wright by depositing a notice of protest of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office in the city of New York, enclosed in an envelope addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

10th question by plaintiff's attorney. Look at the paper now produced, marked plaintiff's Exhibit X, of which the following is a copy:

$510 32-100. NEW YORK, *May 27th*, 1861.

Seven months after date, I, the subscriber, of Logansport,
32 county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred and ten dollars and 32-100 dollars, without any relief whatever from valuation, appraisement, or stay laws now in force, or hereafter to be enacted, at the Bank of North America, New York city, value received.

Due December 30th, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT.

And say whether you have seen the same before, and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 30th day of December, 1861, it was placed in my hands as notary public for presentation by Frank Work. I presented it, and demanded payment of the cashier of the Bank of North America, in the city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid; the exact language I cannot recollect; but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and on the same day I served a notice of protest thereof upon Wm'son Wright by depositing a notice of protest of said note, stating that the said note had on that day been presented, payment demanded and refused, and thereupon protested for
33 non-payment as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office in the city of New York, enclosed in an envelope addressed to

Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

11th question. Look at the paper now produced, marked plaintiff's Exhibit No. IX, of which the following is a copy:

$539 42. NEW YORK, *May, 27th*, 1861.

Six months after date, I, the subscriber, of Logansport, county of Cass, State of Indiana, promise to pay to the order of Williamson Wright five hundred and thirty-nine dollars and 42 cents, without any relief whatever from any valuation, appraisement, or stay laws now in force or hereafter to be enacted at the Bank of North America, New York city, value received.

Due November 30th, 1861.

J. W. WRIGHT.

Indorsed: WM'SON WRIGHT,
EDWARD ALEXANDER.

And say whether you have seen the same before and what, if anything, you have done in reference to the same.

Answer. I have seen this note before. On the 30th day of November, 1861, it was placed in my hands, as notary public, for presentation by Edward Alexander. I presented it and demanded payment of the cashier of the Bank of North America, in the
34 city of New York, during business hours of the same day, who refused to pay the same. I was answered, in substance, by him that said note would not be paid. The exact language I cannot recollect, but payment was positively refused. I thereupon, on the same day, protested this note for non-payment, and the same day I served a notice of protest thereof upon Williamson Wright by depositing a notice of protest of said note, stating that said note had on that day been presented, payment demanded and refused, and thereupon protested for non-payment as above stated, and that the holder would look to the said Wright for payment thereof, in the general post office of the city of New York, enclosed in an envelope addressed to Williamson Wright, at his place of residence at Logansport, Indiana, and prepaid the postage thereon.

[SEAL.] LUCIUS PITKINS.

Subscribed and sworn to before me, this 24th day of November, 1865.

ADDISON BROWN,
Notary Public, New York City.

35 STATE OF NEW YORK,
City and County of New York:

I, Addison Brown, a notary public in and for said county, do hereby certify that the above-named deponents, John Mott and Lucius Pitkins, were by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, in the cause now pending in the circuit court of the United States, district of Indiana, wherein John Mott is plaintiff and Williamson Wright is defendant; that the fore-

going depositions were all written by me and Joseph Barton, a disinterested person, in my presence and under my direction, and that said deponents severally their respective depositions, after the same had been carefully read over to them by me; that the defendant was present by his counsel John W. Wright, at the taking of said Mott's deposition, but was not present either in person or attorney at the taking of said Pitkins' deposition; that all of said depositions were taken at the office of Stanley, Langsdell and Brown, at No. 16 Wall street, New York city, county and State of New York, on the 23d and 24th day of November, 1865, between the hours of eight o'clock a. m. and eight o'clock p. m. of said days, agreeably in all respects to the annexed notice.

36 In witness whereof I hereunto subscribe my name and affix my official seal, this 24th day of November, 1865.

[SEAL.] ADDISON BROWN, *Notary Public.*

The defendant then testifies that an agent of one Robert Ellis, about the time of the date of the notes, called on him at his house in Indiana, with these identical notes, which were then not fully filled up nor signed by John W. Wright, and claiming that they were intended as renewals of certain outstanding notes then held by said Robert on said John indorsed by the defendant, requested the defendant to indorse them also for the accommodation of his brother, the said John W. Wright. In said unfinished form, the defendant did, at said request of said agent, so indorse the said notes for the accommodation of said John W., and so indorsed, then and there delivered the notes to said agent, who left them with D. D. Pratt, an attorney of Logansport, Indiana. The plaintiff then proved by the said Robert Ellis that at the time of the indorsing and making of the said notes, and ever since, he has resided in the city and State of New York—that John W. Wright was then indebted to him on notes in a large sum which were then maturing, and being

37 unable to pay them, it was proposed to renew them and give him further credit by substituting the notes sued on in the place of those then maturing and outstanding; that to effect that purpose, he forwarded by his said agent the notes sued on, then partly in bank, to Logansport, Indiana, to have them indorsed by the defendant and signed by said John W. Wright; afterwards the notes were returned to him indorsed by the defendant, but not yet signed by said John W., but he, the said John W., soon after signed them in the city of New York. The witness, on reflection, expressed doubts whether John W. Wright signed said notes in New York. He stated than on the old notes outstanding and maturing as aforesaid, the defendant was also an indorser; he further swore that the defendant indorsed the notes sued on in bank, and that had been duly negotiated to the plaintiff. The defendant then produced said John W. Wright, who swore that the notes sued on were made in renewal of, and substitution for older notes on him, then held by Robert Ellis. That when the agent of Robert Ellis brought the bank notes to Logansport, Indiana, to have them signed and indorsed, he, the said Wright,

was abroad, and before he returned home the agent was gone; that by a letter he received from Robert Ellis he learned
38 that notes were deposited with D. D. Pratt, esq., in Logansport, Indiana, that he, the witness, then called on Pratt, who produced to him said notes, and he, the witness, then signed them at Pratt's office, in Logansport, Indiana, and then and there left them with Pratt; and that he did not sign them in New York, as stated by said Robert Ellis; at this time when I signed the notes they were not filled up with dates, but Williamson Wright's indorsement was on them, at that time in bank. The defendant also produced the said D. D. Pratt, who testified that he is, and for a long time has been, an attorney at law practicing in Logansport, Indiana; that several years ago John W. Wright turned over to Robert Ellis some real property to secure a debt, situate in Logansport; that Ellis engaged this witness to see to said real property and to attend to the collections of rents arising therefrom; that the witness did attend to that business, and in doing so, acted under the advice and direction of both Robert Ellis and John W. Wright, they both being interested in the matter. Pratt further testified that at about the dates of the notes sued upon, the agent of said Robert W. Ellis brought them to the office of the witness in Logansport, Indiana, and left them with him to be
39 signed by John W. Wright, they being already indorsed by the defendant; that a little time afterwards said John W. Wright called at said office and signed said notes, and that thereupon he, the said Pratt, sent the said notes by express to said Ellis at New York. In reference to this business I charged no commission. The defendant also read in evidence three letters, of which the following are copies:

NEW YORK, *May 28th*, 1861.

John W. Wright, esq.:

DEAR SIR: Yours of 23d came duly to hand, and this morning I received a letter from my brother saying you left Logansport the day before he arrived. He says the railroad company are paying off judgments against John W. Wright & Co., but that Judson would not pay him without an order from you. Enclosed I send you new notes to sign, and some to your brother to indorse, and an order on Judson on the railroad co. Please sign the order and notes and return them to me, and I will forward those for your brother to indorse them and send them to me, and fix that railroad order so that it will be paid; for I want the money, and it ought to have been the first and not the last paid.
40 I want to see you badly, and you must come this way on your return from Washington. It will save me a trip to Indiana, as I must see you. I am getting into a tight place, and you must assist me out; so come here soon and let me know when.

Yours,

ROBERT ELLIS.

NEW YORK, *May 31st*, 1861.

John W. Wright, esq.:

DEAR SIR: Yours of yesterday came to hand this morning enclosing notes signed. I will not send on the Williamson Wright notes until I see you, if you come this way. I cannot leave here, as I am wanted every hour, and must be on hand. You must come this way on your way home, and write to me by return mail when you will be here.

Your friend,

ROBERT ELLIS.

NEW YORK, *June 7th*, 1861.

John W. Wright, esq.:

DEAR SIR: I had a great many important things to attend to yesterday and was dreadfully worried all day; and when I parted with you I understood you was to stay until Sunday night, and when I
41 returned to the store, my brother said you had gone to the hotel and gone to bed, but would see me in the morning. But when I got home I was tired almost to death, and thought I would rest myself and let you rest. I ought to have gone to see you, and now I am sorry I did not. The railroad co. owe me $1,074 49, due June 1st, and you have certified to the statement. Now will you please make a draft on Judson or the proper one for the amount and get it accepted and paid? Will you please call on D. D. Pratt and sign the notes your brother indorsed, and send them to me; and tell Pratt that I will look up and send to him the receipts for taxes paid by me, and I want you to raise the money to pay the taxes. Hoping to hear from you by return mail, and again as soon as you return from Kansas, I remain,

Your friend,

ROBERT ELLIS.

And after the evidence had been heard, the court found for the plaintiff as elsewhere in this record shown, and thereupon the defendant, by leave of the court, moved to set aside the finding of the court and to enter a non-suit against the said plaintiff, on the alleged grounds that the law arising upon the facts, as shown in this
42 bill of exceptions, did not entitle the said plaintiff to judgment, and that the said facts were not sufficient in law to enable the said plaintiff to maintain his said action, which motion was by the court taken under advisement until the present term of the court, at which time, to wit, on the 9th day of the May term of the said court, A. D. 1866, the court overruled said motion and refused to enter said non-suit, but entered the judgment in said finding, which elsewhere appears in this said record; to which decision of the court in overruling the said motion and in refusing to enter said non-suit, the said defendant at the time excepted, and prays that this his bill of exceptions may be signed and sealed by this court and made a part of this record, which is done accordingly.

D. DAVIS.

D. McDONALD.

43 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the 8th judicial district of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you between John Mott and Williamson Wright, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

44 Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court of the United States, this 14th day of May, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] JOHN D. HOWLAND,
Clerk of the Circuit Court, Dist. of Indiana.

Filed May 14th, 1866.

J. D. HOWLAND, *Cl'k.*

45 United States of America to John Mott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the court for the trial of impeachments and the correction of errors of the circuit court of the United States for the 8th circuit and district of Indiana, wherein Williamson Wright is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the honorable David Davis, one of the judges of said Supreme Court of the United States, this 14th day of May, A. D. 1866.

D. DAVIS,
Associate Justice of the Supreme Court of the United States, and presiding judge of the eighth judicial circuit.

46 This citation was duly served this 14th May, 1866.

PORTER, HARRISON & FISHBACK,
Att'ys for Def't in Error.

Filed May 14, 1866.

J. D. HOWLAND, *Cl'k.*

47 UNITED STATES OF AMERICA, *District of Indiana, ss:*

I, John D. Howland, clerk of the United States circuit court in and for the district aforesaid, do hereby certify that the above and foregoing transcript is a full, true, and complete copy of the record and proceedings of said court in the above-entitled cause as fully as the same remains in said court; and that attached thereto is the original writ of error in said cause, which was filed in this office on the 14th day of May, 1866; and also the original citation, with entry of service acknowledged, indorsed on the same, which was also filed, as indorsed, in this office on the same 14th day of May, 1866.

In testimony whereof I do hereunto set my hand and the seal of said court, at Indianapolis, this 5th day of July, 1866.

[SEAL.] J. D. HOWLAND, *Clerk.*

48 Supreme Court of the United States.—December term, A. D. 1866.

WILLIAMSON WRIGHT
vs.
JOHN MOTT. } In error.

Afterwards, to wit, on the 1st Monday of December, A. D. 1866, before the justices of the Supreme Court of the United States, at this term, in the city of Washington, comes the said Williamson Wright, by Thomas Ewing, jr., his attorney, and says that there is error in the record and proceedings aforesaid in this:

1st. The court below erred in not entering a non-suit against the defendant in error as moved by the plaintiff in error, and shown in said record.

2d. That the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said John Mott to have or maintain his aforesaid action thereof against the said Williamson Wright, and therefore said court erred in rendering judgment for said Mott in said cause.

3d. The judgment of the court below is not sustained by the evidence, and is contrary to law.

49 Wherefore the said Williamson Wright prays that the judgment aforesaid may be reversed and annulled, and that he be restored to all he has lost thereby, &c.

THOMAS EWING, JR.,
Att'y for Pl'ff in Error.

Filed 1st Dec'r, 1866.

O

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

WILLIAMSON WRIGHT,
Plff. in Error,

vs.

JOHN MOTT.

EDWARDS PIERREPONT,
Counsel for Jno. Mott.

BRIEF.

First.—This is clearly a New York contract, and hence it must be governed by the Laws of New York.
(Pages 17, 18, 19.)

Second.—The notes were dated New York; they were payable in New York; they were given to a citizen and resident of New York, in renewal of other endorsed notes held by the said resident and citizen of New York, against the defendant and J. W. Wright.

Third.—All the necessary steps were taken to hold the defendant on his contract, and there was no error committed by the Court.

EDWARDS PIERREPONT,
Of Counsel for
Deft. in Error.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

WILLIAMSON WRIGHT,
Plff. in Error,

vs.

JOHN MOTT.

EDWARDS PIERREPONT,
Counsel for Jno. Mott.

BRIEF.

First.—This is clearly a New York contract, and hence it must be governed by the Laws of New York.
(Pages 17, 18, 19.)

Second.—The notes were dated New York; they were payable in New York; they were given to a citizen and resident of New York, in renewal of other endorsed notes held by the said resident and citizen of New York, against the defendant and J. W. Wright.

Third.—All the necessary steps were taken to hold the defendant on his contract, and there was no error committed by the Court.

EDWARDS PIERREPONT,
Of Counsel for
Deft. in Error.